

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT
AT LYNCHBURG, VA
FILED

NOV 01 2005

JOHN F. CORCORAN, CLERK
BY: *[Signature]*
DEPUTY CLERK

ROBERT E. TYLER,
W. MICHAEL HAGER,
WESLEY L. WRIGHT,
ROBERT E. TINSLEY, JR.,
GENTRY R. P. FERRELL,
METRO FIRE & RESCUE, INC.,

and

ENVIRONMENTAL TECHNOLOGIES, INC.

Plaintiffs,

v.

PAUL H. BERGER,

and

BAUM'S CASTORINE COMPANY, INC.

Defendants.

CIVIL ACTION No. 6:05-CV-00030

ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiffs' August 18, 2005 Motion to Dismiss Counts Six and Nine of Defendants' counterclaims pursuant to Fed. R. Civ. P. 12(b)(6). The Court heard arguments on this motion on October 3, 2005. For the reasons stated in the accompanying Memorandum Opinion, Plaintiffs' motion is DENIED with respect to Count Nine and GRANTED with respect to Count Six.

It is so ORDERED.

The Clerk of the Court is directed to send certified copies of this Order to all Counsel of Record.

ENTERED: *Norman C. Moore*
U.S. District Judge
November 1, 2005
Date